

**TABC DOCKET NO. 642290**

(ORIGINAL APPLICATION)

**PRIME DAIQUIRI, LLC** § **OFFICE OF THE COUNTY JUDGE**  
**D/B/A PRIME DAIQUIRI** §  
**8275 Beechnut Street** §  
**Houston, Harris County, Texas** § **HARRIS COUNTY, TEXAS**

**TYPE OF PERMIT: Wine and Beer Retailer's Permit – BG**  
**Retail Dealer's On-Premise Late Hours License – BL**

**MASTER'S REPORT**

A hearing was held on April 17, 2017 before Bill Henderson, the Master appointed by Harris County Judge Ed Emmett, to consider the protest against the application of Prime Daiquiri, LLC, d/b/a Prime Daiquiri for a Wine and Beer Retailer's Permit and Retail Dealer's On-Premise Late Hours License. Notice of the hearing was given to the Applicant and all parties entitled to notice.

Appearances were as follows:

For the Applicant

Clyde Burleson, attorney representing Applicant  
Tosanwumi Mene-Ejegi (Mr. Mene), Manager of Applicant  
Jim Bigham, Past President for Sharpstown Civic Association (SCA)  
Nohaxoa Javed, an attorney and project manager for Applicant

For the TABC

Shelia Lindsey-Sanders, TABC Attorney

For the Protesters

Pat Menville, President of SCA  
Mike Laster, Houston City Councilmember, District J  
John Karshner, Chief of Police for Houston Baptist University

The following exhibits were offered and admitted:

- TABC - 1: Pending Application
- TABC - 2: Affidavit w/ related documents
- Protester 1: Opening statement of Pat Menville w/ photos and related documents from the TABC website
- Applicant - 1: Press Release from HBU
- Applicant - 2: Google maps
- Applicant - 3: TABC 60-day sign for Chipotle
- Applicant - 4: Records from TABC Public Inquiry
- Applicant - 5: Google image
- Applicant - 6: List of other drive-through daiquiri establishments
- Applicant - 7: City of Houston Planning Dept. plan check
- Applicant - 8: Supporters Pledge
- Applicant - 9: Pledge with P.D. seal
- Applicant - 10: P.D. menu
- Applicant - 11: Facebook demographics
- Applicant - 12: TABC Seller Training Certification for Mr. and Mrs. Mene
- Applicant - 13: Invoice for expenses incurred by Mr. Mene
- Applicant - 14: Plastic bottle like what will be used for daiquiris
- Applicant - 15: Photo of building being remodeled to house P.D.
- Applicant - 16: Architectural rendition of completed building
- Applicant - 17: Statement from Gary Warner dated April 5, 2017

In addition, the following documents were received by the Master:

1. Letter of opposition from Houston Councilmember Mike Laster
2. Email from Pat Menville with a copy of email from Mr. Mene
3. Letter of support from Jim Bigham with SW Houston Alliance
4. Memo from Gary Warner dated April 26, 2017

After considering the testimony, the evidence and the argument of the parties, the Master makes the following Findings of Fact and Conclusions of Law:

#### Findings of Fact

1. Prime Daiquiri has proposed to construct a drive through and dine in eating establishment and has applied for a Wine and Beer Retailer's Permit and a Retail Dealer's On-Premise Late Hours License so that they can sell beer and wine-based margaritas and daiquiris at 8275 Beechnut.

2. The drive through alcoholic beverages will be sold in a plastic, sealed container, not unlike juice containers (see Exhibit A-14).
3. The SCA believes that the drive through sale of liquor will cause an increase in intoxicated drivers in the neighborhood directly across Beechnut from the proposed establishment.
4. Councilmember Mike Laster is also concerned about the public consumption of alcohol and underage drinking, both of which would be a violation of any permit or license obtained by Prime Daquiri.
5. Mr. Mene offered to terminate the sale of alcoholic beverages at the drive through window at 10:30 p.m. if SCA withdrew its protest. Such offer became null and void when the protesters did not withdraw the protest.
6. Mr. Mene did agree that he would provide off-duty law enforcement officers to help insure that alcoholic beverages were not opened or consumed on the property and did offer to terminate the sale of alcoholic beverages at the drive through window at 9:00 pm Sunday through Thursday and 11:00 pm on Friday and Saturday.
7. The sale of alcoholic beverages at the drive through window is not much different than the sale of single cans of beer by a convenience store to a driver.
8. Mr. and Mrs. Mene have both received a Sellers Training Certificate in anticipation of trying to prevent any violations of the TABC permit. Furthermore, they have had customers sign a "Don't Drink and Drive" pledge.
9. A statement was offered on behalf of Gary Warner who represents the management company that operates the shopping center. Mr. Warner had been present at the first hearing, which had to be rescheduled and was unable to attend this hearing. The management company and landlord have made a significant commitment to this shopping center since 2014 and the resulting improvements have been beneficial to the community and they believe that Prime Daquiri will be a positive addition to the shopping center.

#### Conclusions of Law

As long as the Texas legislature has seen fit to allow the sale of alcoholic beverages as proposed by Prime Daiquiri, there must be more evidence to prohibit this proposal than has been presented. In fact, because of the proposals and pledges offered and the training already obtained by the Mr. and Mrs. Mene, this establishment is far less likely to harm the community than most permitted establishments. The Master finds that the place or manner in which the Applicant will conduct his business

does not warrant a refusal of the license based on the general welfare, health, peace, morals, safety and sense of decency of the people.

The application of Prime Daiquiri, LLC, d/b/a Prime Daiquiri for a Wine and Beer Retailer's Permit and Retail Dealer's On-Premise Late Hours License is hereby GRANTED subject to the following conditions:

1. No alcoholic beverages shall be sold through the drive through window after 9:00 p.m. on Sunday through Thursday and after 11:00 p.m. on Friday and Saturday;
2. An off-duty law enforcement officer must be employed three week days per week between 5:00 and 9:00 p.m. and on Fridays and Saturdays between 6:00 p.m. and 11:00 p.m.; and
3. Applicant shall use its best efforts to discourage patrons from exiting the establishment on to Beechnut at the Mary Bates exit.

SIGNED ON: 5-15-17

  
Bill Henderson, Master